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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/355,254	02/22/2000	HERMANN WAGNER	C1041/7005	6183

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EXAMINER

ZARA, JANE J

ART UNIT

PAPER NUMBER

1635

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/355,254

Applicant(s)

WAGNER ET AL.

Examiner

Jane Zara

Art Unit

1635

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 24,26,27,40-45,48,49,51-53,59,63,65 and 68-70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☒ Claim(s) 46,47,50,54-58,60-62,64,66 and 67 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10-15-04</u> . | 6) <input checked="" type="checkbox"/> Other: <u>See Continuation Sheet</u> .           |

Continuation of Attachment(s) 6). Other: july 2, 1999 amendment sheet (copy).

### **DETAILED ACTION**

This Office action is in response to the communication filed 11-15-04.

Claims 24, 26, 27 and 40-70 are pending in the instant application.

### ***Response to Arguments and Amendments***

#### **Maintained Rejections**

Claims 24, 26, 27, 40-45, 48, 49, 51-53, 59, 63, 65 and 68-70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chu et al, in view of the combined teachings of McKnight et al, Hinrichs et al, Dolganov et al, Stanford et al, Levy et al, Green et al, Ono et al, Cha et al and Harada et al, and Hutcherson et al for the same reasons of record as set forth in the Office action mailed 9-1-04.

Applicant's arguments filed 11-15-04 have been fully considered but they are not persuasive.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Applicant argues that Chu does not qualify as prior art in the instant 103 rejection because it post-dates the claimed priority of the instant application, which relies upon PCT/EP98/0037, filed 1-23-98, which in turn claims priority to EP 97101019.4, filed 1-23-97. Since Applicant relies upon the foreign document EP 971010194 for the disclosure of both the sequences claimed and the disclosure of the combination of the sequences and an antigen, a translation is requested for this foreign document which

provides support for the combination of the sequences claimed and an antigen, and which is consistent with the pharmaceutical compositions claimed in the instant application.

It is also noted that amendments were filed on July 2, 1999 by Applicant pertaining to the priority document PCT/EP98/0037, which amendments include claims of a pharmaceutical composition comprising the sequences claimed in combination with an antigen. The date of these amendments (7-2-99) post-date the priority date of the Chu reference (11-17-97). Chu is relied upon in the instant 103 rejection for teaching induction of a Th1 response in mice following co-administration of unmethylated CpG containing oligonucleotides in combination with an antigen. Chu teaches co-administration of an antigen and a CpG containing oligonucleotide for increasing vaccine efficacy as well as eliciting a Th1 response to protect against microbial infections (see p. 4 of the Office action mailed 9-1-04 for further elaboration of the teachings of Chu et al).

Likewise, the references of McKnight, Hinrichs, Dolganov, Stanford, Levy, Green, Ono, Cha, Harada and Hutcherson are properly combined with the teachings of Chu because these references disclose the same sequences claimed in the instant application. All of the references relied upon have priority dates that precede the amendments to EP98/0037 of July 2, 1999, and so, contrary to Applicant's assertions, these combined references properly render the instant invention obvious.

***Allowable Subject Matter***

Claims 46, 47, 50, 54, 55, 56, 57, 58, 60-62, 64, 66 and 67 appear free of the prior art searched and of record. These claims are objected to because they depend from a rejected claim.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

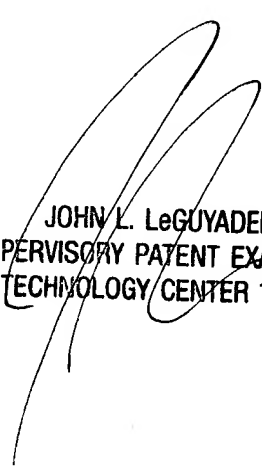
Certain papers related to this application may be submitted to Art Unit 1635 by facsimile transmission. The faxing of such papers must conform with the notices published in the Official Gazette, 1156 OG 61 (November 16, 1993) and 1157 OG 94 (December 28, 1993) (see 37 C.F.R. § 1.6(d)). The official fax telephone number for the Group is **703-872-9306**. NOTE: If Applicant *does* submit a paper by fax, the original signed copy should be retained by applicant or applicant's representative. NO

DUPLICATE COPIES SHOULD BE SUBMITTED so as to avoid the processing of duplicate papers in the Office.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Jane Zara** whose telephone number is **(571) 272-0765**. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader, can be reached on (571) 272-0760. Any inquiry regarding this application should be directed to the patent analyst, Katrina Turner, whose telephone number is (571) 272-0564. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JZ  
1-26-05

  
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